



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

USCG-2012-1085

RIN 1625-AA09

Drawbridge Operation Regulation; Christina River,  
Wilmington, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Third Street Bridge at mile 2.3, the Walnut Street Bridge at mile 2.8, and the Market Street Bridge at mile 3.0, all located on the Christina River in Wilmington, DE. Since the three drawbridges are located near one another and the few vessels that do transit this waterway usually go through all three bridges, it is proposed that all the bridges open on the same eight hour advance notice. This proposal would change the current regulations by allowing the Third Street and Walnut Street drawbridges to be opened in sequence with the same eight hour advance notice currently given to the Market Street drawbridge. This proposed schedule clarifies the sequencing of the three drawbridge openings, and provides for the

reasonable needs of navigation.

DATES: Comments and related material must be received by the Coast Guard on or before [Insert date 45 days after date of publication in the FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by docket number USCG-2012-1085 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M 30), U.S.. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590-0001. Deliveries will be accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments. To avoid duplication, please use only one of these methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Terrance A. Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at (757) 398-6587, [terrance.a.knowles@uscg.mil](mailto:terrance.a.knowles@uscg.mil).

If you have questions on viewing or submitting material to

the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-1085), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>,

it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG-2012-1085) in the "SEARCH" box and click "SEARCH". Click on the "Submit a Comment" on the line associated with this notice of proposed rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in

this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2012-1085) in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this notice of proposed rulemaking. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

### 4. Public Meeting

We do not now plan to hold a public meeting. You may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

## B. Regulatory History and Information

The current Drawbridge Operation Regulation, 33 CFR 117.237(c), for the Christina River, Third Street drawbridge at mile 2.3 and the Walnut Street drawbridge at mile 2.8, in Wilmington, DE requires both of the bridges to open on signal, and that the Market Street drawbridge at mile 3.0, open on signal with eight hours advance notice.

## C. Basis and Purpose

The Delaware Department of Transportation (DELDOT) who owns and operates these bascule-type drawbridges have requested a permanent change to the existing bridge regulations, allowing the Third Street and Walnut Street bridges to also open on signal with eight hours advance notice as does the Market Street Bridge. This proposed schedule allows for all three of the drawbridges to be opened in sequence on the same opening request if required. Vessel traffic on this part of the Christina River consists of a few commercial and pleasure craft.

Three vessels cause 97% of the openings at the three bridges: The Kalmar Nyckel sail ship, the River Taxi, and the River Boat Queen. The Market Street bridge has the most restrictive vertical clearance of the three drawbridges (8 feet above mean high water), and was opened a total 578 times in 2011. In 2011, the Walnut Street Bridge was opened 244 times and the Third Street Bridge was

opened 250 times. The River Taxi does not require an opening to pass under the Third and Walnut Street Bridges.

#### D. Discussion of Proposed Rule

Our proposed change to 33 CFR 117.237(c) would allow for a more ordered process of transiting through the three draw spans while providing for the reasonable needs of navigation. The Market Street Drawbridge presently opens with 8 hours advance notice and it is proposed that both the Third Street and Walnut Street bridges open on the same 8 hour notice when needed.

In addition, a text modification is required to remove the last sentence in paragraph 117.237(c) "The draws of these bridges shall open at all times as soon as possible for passage of a public vessel of the United States". This sentence is being removed because it is already addressed in paragraph 117.31(b)(1).

#### E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by

Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The proposed changes are expected to have minimal impact on mariners due to the low number of vessels requiring openings on the river. In addition, because an 8-hour advance notice is currently required for the Market Street Bridge opening, it is understood that time for passage through all three bridges, under the proposed rule, will be consistent with the current regulation.

## 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule will not have a significant economic impact on a substantial number of small entities because only a few vessels transit through all three of the bridges and it is rare that in such cases any vessel stops between the three bridges. Most commercial traffic will



leave and return during the day. The proposed rule would possibly affect small entities such as owners/operators of vessels needing to transit through the three bridges but requiring more than eight feet of vertical clearance (most restrictive bridge). These vessels can minimize delays and plan their transits in accordance with the proposed opening schedule.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the

expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### 13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01, and Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded under figure 2-1, paragraph (32) (e), of the Instruction.

Under figure 2-1, paragraph (32) (e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In §117.237, revise paragraph (c) to read as follows:

§ 117.237 Christina River

\* \* \* \* \*

(c) The draws of the Third Street Bridge at mile 2.3, the Walnut Street Bridge at mile 2.8, and the Market Street Bridge at mile 3.0, located in Wilmington, DE shall all open on signal if at least eight hours notice is given. From 7 a.m. to 8 a.m. and 4:30 p.m. to 5:30 p.m., Monday through Saturday except holidays, the draws of these three bridges need not be opened for the passage of vessels. Any vessel which has passed through one or more of these

bridges immediately prior to a closed period and which requires passage through the other bridge or bridges in order to continue to its destination shall be passed through the draw or draws of the bridge or bridges without delay.

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Dated: January 11, 2013

Steven H. Ratti  
Rear Admiral, U.S. Coast Guard  
Commander, Fifth Coast Guard District

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